

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 LAMONT JEFFRIES,

Case No. 2:19-cv-01501-KJD-EJY

5 Plaintiff,

6 v.

ORDER

7 CONEX WEST,

8 Defendant.
9

10 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C.
11 § 1915 to proceed *in forma pauperis*. ECF No. 1. Plaintiff also attached a Complaint to his *in forma*
12 *pauperis* application. ECF No. 1-1.

13 **I. In Forma Pauperis Application**

14 Plaintiff has submitted the affidavit required by § 1915 showing an inability to prepay fees
15 and costs or give security for them. ECF No. 1. Accordingly, the request to proceed *in forma*
16 *pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review Plaintiff's
17 Complaint.

18 **II. Screening the Complaint**

19 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
20 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
21 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted
22 or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
23 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state
24 a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112
25 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter,
26 accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556
27 U.S. 662, 678 (2009). The court liberally construes *pro se* complaints and may only dismiss them

1 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
2 would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
3 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of material
5 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship*
6 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the
7 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
8 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
9 A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the
10 complaint’s deficiencies could not be cured through amendment, a *pro se* plaintiff should be given
11 leave to amend the complaint with notice regarding the complaint’s deficiencies. *Cato v. United*
12 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Here, Plaintiff alleges a claim of “disability discrimination” against Defendant. ECF No. 1-
14 1. An individual planning to file a lawsuit under federal law alleging discrimination on the basis of
15 disability must first file a charge with the Equal Employment Opportunity Commission (“EEOC”)
16 within 180 days of the discriminatory act, or within 300 days if there is a State or local law that
17 provides relief for discrimination on the basis of disability. U.S. Equal Employment Opportunity
18 Commission, *Filing a Lawsuit*, <https://eeoc.gov/employees/lawsuit.cfm> (last visited Sept. 3, 2019).
19 The EEOC will issue a Notice of Right to Sue at the time it closes its investigation, which gives the
20 aggrieved party permission to file a lawsuit in federal or state court. *Id.* Once the party receives a
21 Notice of Right to Sue, it must file a lawsuit within 90 days. *Id.* Here, Plaintiff did not attach a right
22 to sue letter from the EEOC. There is no information about when, or if, Plaintiff commenced his
23 efforts to file such a charge. Thus, it may be that Plaintiff’s claim is timely or untimely.

24 In screening Plaintiff’s complaint and construing it liberally, the Court looks in part to the
25 attachments provided. *See Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (courts may
26 generally consider allegations contained in pleadings, as well as exhibits attached to the complaint).
27 To sufficiently allege a *prima facie* case of discrimination in violation of the Americans with
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1 Disabilities Act (“ADA”), the Plaintiff must demonstrate that (1) he is disabled within the meaning
2 of the ADA; (2) he is a qualified individual able to perform the essential functions of the job with
3 reasonable accommodation; and (3) he suffered an adverse employment action because of his
4 disability. *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1246 (9th Cir. 1999). Here, it seems
5 Plaintiff attached to his complaint photos of text messages spanning two different conversations
6 between himself and a supervisory figure employed with the Defendant. In the first conversation,
7 Plaintiff explains to his former supervisor that “today is [his] treatment day . . . It’s [sic] starts at
8 9am. It takes a little time to hook me up to the machine.” Defendant replied and told Plaintiff “do
9 not worry about that come in the afternoon from 12-3pm instead. Is this a weekly medical procedure?
10 Send me your weekly medical schedule please. I need to schedule this long term.” In the second
11 conversation, Defendant apologetically explains to Plaintiff that he does not believe this is a good
12 match because Conex West in Las Vegas is going through a “very critical building period in [its]
13 business.” Defendant states that it is “[his] fault for not asking more questions initially.” Finally,
14 Defendant states that “if Conex West ever gets to the point where it can “have our representatives
15 become home based employees you will be my first choice . . . [b]eing present for all five days
16 during the work week is mandatory for our success at this time in our business cycle.”

17 Plaintiff’s disability discrimination claim fail to sufficient allege facts upon which relief may
18 be granted pursuant to the standards established in *Iqbal*, 556 U.S. at 679. That is, Plaintiff must
19 demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.*
20 Further, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the
21 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
22 at 678. Read liberally, Plaintiff has sufficiently plead that he is disabled within the meaning of the
23 ADA and that he suffered an adverse employment action because of his disability. However,
24 Plaintiff has failed to sufficiently plead that he is a qualified individual able to perform the essential
25 functions of the job with or without a reasonable accommodation. Accordingly, Plaintiff has not
26 met the pleading standards or alleged sufficient facts to establish more than he is a member of a
27 protected class and that he suffered an adverse employment action.

1 The Court therefore will dismiss Plaintiff's complaint without prejudice for the Plaintiff to
2 file an amended complaint that meets the jurisdiction requirements.

3 If Plaintiff chooses to file an amended complaint, the document must be titled "Amended
4 Complaint." The amended complaint must contain a short and plain statement of the grounds for
5 the Court's jurisdiction. Fed. R. Civ. P. 8(a)(1). Additionally, the amended complaint must contain
6 a short and plain statement describing the underlying case and Defendant's conduct that constitutes
7 discrimination. Fed. R. Civ. P. 8(a)(2). Although the Federal Rules of Civil Procedure adopt a
8 flexible pleading standard, Plaintiff still must give the Defendant Conex West fair notice of the
9 Plaintiff's claims against it and Plaintiff's entitlement to relief.

10 Additionally, Plaintiff is advised that if he files an amended complaint, the original complaint
11 (ECF No. 1-1) no longer serves any function in this case. As such, the amended complaint must be
12 complete in and of itself without reference to prior pleadings or other documents. The Court cannot
13 refer to a prior pleading or other documents to make Plaintiff's amended complaint complete.

14 IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*
15 *Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this action.
16 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of
17 any additional fees or costs or the giving of a security for fees or costs. This Order granting leave
18 to proceed *in forma pauperis* does not extend to the issuance of subpoenas at government expense.

1 IT IS FURTHER ORDERED that the Complaint (ECF No. 1-1) is DISMISSED without
2 prejudice for failure to state a claim upon which relief can be granted, with leave to amend. If
3 Plaintiff chooses to file an amended complaint, Plaintiff must file the amended complaint within 30
4 days from the date of this Order. Failure to comply with this Order may result in a recommendation
5 that this action be dismissed.

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7 DATED THIS 5th day of September, 2019.

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10 ELAYNA J. YOUCHAH
11 UNITED STATES MAGISTRATE JUDGE
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